

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Implementation of the)
Cable Television Consumer) MM Docket No. 92-260
Protection and Competition)
Act of 1992)
)
Cable Home Wiring)

REPLY COMMENTS OF MEDIA ACCESS PROJECT

Media Access Project ("MAP") respectfully submits these reply comments in response to various comments filed pursuant to the Notice of Proposed Rulemaking ("NOPR"), FCC No. 92-500 issued in the above proceeding.

MAP wishes to reiterate that the intended beneficiaries of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act" or "the Act") are television viewers, not any designated multichannel video provider or an industry which hopes to one day provide video services. As is made plain by the statement of policy contained in Section 2(b) of the Act, the overriding purpose of the Act is to insure that television viewers were given access to a wide diversity of programming at reasonable cost.¹ The Commission should keep this essential goal in mind when promulgating rules in this and all other rulemakings under the 1992 Cable Act.

¹Section 2(b) states, in relevant part: "It is the policy of the Congress in this Act to--(1)promote the availability to the public of a diversity of views and information through cable television and other video distribution media;...and...(5)ensure that cable television operators do not have undue market power vis-a-vis video programmers and consumers."

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With this goal in mind, MAP asks that in reviewing initial comments, the Commission insure that rules regarding home wiring effectively promote competition in the delivery of non-over-the-air services. At a minimum, such policies should insure that cable wire installed in the home by cable system operators be made readily available for subsequent access by multichannel video services offered by other program providers.

A. "Disposition" of Wiring

Time Warner Entertainment argues that the language in Section 16(d) requires only that the Commission promulgate rules governing the "disposition" of the home cable wire, and that such "disposition" does not necessarily include granting ownership to cable subscribers. Comments of Time Warner Entertainment at 15-18 ("TWE Comments"). But the term "disposition" is broad enough to include consideration of ownership,² and as the Commission noted, the legislative history is clear - it "favor[s] the Commission fashioning rules that would enable the subscriber to acquire cable home wiring upon termination of service. NOPR at `2. See Comments of Tele-Communications Inc. at 2-5 ("TCI Comments").

Even so, Time Warner favors rules whereby the Commission would require no more than that the cable operator negotiate with the subscriber for control of the wire upon termination of service. TWE Comments at 16. But, as another commenter notes, the cable industry's "negotiation" techniques often result in threats

²One definition of "disposition" is "the power to control, direct or dispose." The American Heritage Dictionary of the American Language (1981).

of litigation and other similar pressure tactics. Comments of the Wireless Cable Association International at 3-4 ("WCA Comments"). The matter at hand would be greatly simplified if the Commission simply adopted across-the-board rules which permitted subscriber ownership of the wire either at the time of installation³ or at termination of cable service.⁴

B. Value of Home Wire

Several commenters argue that upon termination of service, cable operators should get "just compensation," or "fair market value" for the wire. E.g., Comments of Cablevision Systems Corporation at 3-5; Comments of Times Mirror Cable at 8. Presumably, the value of these terms will be whatever the cable operator says it is. Given the cable industry's long and unbroken history of predation, that value would be surely high enough to discourage retention of the wire and consequently, its use by other service providers. As MAP and other commenters have argued, the installation fees paid at the time service commences should be sufficient payment to vest ownership of the wire in the home

³In its initial comments, MAP suggested that if the Commission finds the authority in the 1992 Cable Act to vest ownership in home wire at the time of installation, it should do so. MAP Comments at 2 n.2. See, WCA Comments at 7.

⁴Several commenters have urged the Commission to permit operators to retain ownership of home cable wire where service has been terminated for theft of service or nonpayment. E.g., TWE Comments at 18-19, Comments of Community Antenna Television Association at 3. Should the Commission permit this, it must enact rules which carefully define "nonpayment" in such a way that does not become a loophole that permits cable operators to claim ownership casually simply because of a pattern of occasional late payments or a billing dispute.

owner. MAP Comments at 2; see, e.g., Comments of New York City Department of Telecommunications at 6 ("NYC Comments"); Comments of National Association of Telecommunications Officers and Advisors, et al. at 2 ("NATOA Comments"). Any costs not recouped by this payment can be treated as capital expenditures and amortized over the life of the wiring. See, TCI Comments at 7.

In the few cases where a subscriber terminates before the cable operator recoups its costs, the cable operator must accept this as a cost of doing business, and recoup its costs through monthly and other fees paid by other subscribers. In practice, fees will be set high enough to absorb the unrecovered costs of the handful of early terminations.

In addition, the cable industry comments universally ignore a critical component regarding the value of home cable wire, namely the fact that the cost incurred in removing home wiring and repairing subsequent damage to the home far exceeds the salvage value of the wire. WCA Comments at 2. Thus, the only plausible reason for cable operators' reticence to permit low-cost ownership of the wire is that it would permit uninhibited access to other multichannel video providers.

C. Prospectivity of Rules

A number of commenters urge the Commission to make its home wiring rules operate only prospectively. E.g., TWE Comments at 19-21; Comments of National Cable Television Association at 11 ("NCTA Comments"). This would essentially render these rules useless. Prospective application of the rules would exclude the

nearly 60% of television homes which are currently subscribed to cable. Of the remaining 40% of homes that do not yet subscribe to cable, perhaps half or more may never get cable because they cannot afford it, because the cable industry's offerings otherwise fail to meet their needs, or service is unavailable. Thus, prospective application would likely mean the home wiring rules would ever apply to perhaps only one-fourth of cable homes. To give the Commission's rules full force and effect, then, those rules must be applied retroactively.⁵


D. Leakage

Finally, MAP is in agreement with the various commenters which argue that once cable service is terminated and ownership of the wire is vested in the owner, cable operators should be relieved of any liability for signal leakage. E.g., NATOA Comments at 8; NYC Comments at 9. Responsibility for signal leakage

⁵In support of prospective application of the home wiring rules, several cable industry commenters express concern that the rules not conflict with current contractual arrangements regarding disposition of the inside wire. E.g., TWE Comments at 21, NCTA Comments at 11. The industry is rightly concerned with the integrity of its contracts. However, it freely permitted the terms of 1984 Cable Act to preempt provisions in pre-1984 franchise agreements. Moreover, of numerous other aspects of the 1992 Cable Act which may result in preemption, several were adopted with the active encouragement of the cable industry. There is even more reason to permit preemption here, where the Commission rules would remedy a competitive imbalance and permit increased access to programming for the public. At the least, the Commission should require that cable operators inform all persons with whom they have a contract regarding disposition of the wire and give them the option of either enforcement of the contract or preemption.

should rest with succeeding service providers.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gigi B. Sohn". The signature is fluid and cursive, with the first name "Gigi" being more prominent.

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